

EXHIBIT A



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI

WALTER W. THIEMANN, on :
behalf of himself and :
of all others similarly :
situated, :
Plaintiff, :
VS. : CASE NO. C-1-00793
OHSL FINANCIAL CORP., :
OAK HILLS SAVINGS AND :
LOAN COMPANY, F.A., :
NORBERT G. BRINKER, :
KENNETH L. HANAUER, :
WILLIAM R. HILLEBRAND, :
ALVIN E. HUCKE, THOMAS :
E. MCKIERNAN, JOSEPH J. :
TENOEVER, HOWARD N. :
ZOELLNER, PROVIDENT :
FINANCIAL GROUP, INC., :
ROBERT L. HOVERSON, :
JACK M. COOK, THOMAS D. :
GROTE, JR., PHILIP R. :
MYERS, JOSEPH A. PEDOTO, :
JOSEPH A. STEGER, :
CHRISTOPHER J. CAREY, :
CLIFFORD ROE, and :
DINSMORE & SHOHL, LLP, :
Defendants. :

Transcript of hearing held before
Magistrate Judge Hogan, pursuant to the

1 Federal Rules of Civil Procedure, taken
2 before me, Lee Ann Williams, a Registered
3 Professional Reporter and Notary Public in
4 and for the State of Ohio, on Friday, March 5,
5 2004, at 1:00 p.m.

6
7 APPEARANCES:

8 On behalf of the Plaintiffs:

9 Michael G. Brautigam, Esq.
10 and
11 Gene Mesh, Esq.
12 Gene Mesh & Associates
2605 Burnet Avenue
Cincinnati, Ohio 45219

13 On behalf of the Defendants:

14 James E. Burke, Esq.
15 Rachael A. Rowe, Esq.
16 Keating, Muething & Klekamp
1400 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202

17 On behalf of the Defendants Dinsmore &
18 Shohl and Clifford Roe:

19 John W. Hust, Esq.
20 Schroeder, Maundrell, Barbriere
21 & Powers
110 Governor's Knoll
11935 Mason Road
Cincinnati, Ohio 45249

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

On behalf of the Defendants:

Thomas W. Breidenstein, Esq.
Barrett & Weber
105 East Fourth Street
Suite 500
Cincinnati, Ohio 45202

On Behalf of the Defendants:

Mary-Helen Perry, Esq.
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001

- - -

1 THE COURT: All right. I
2 requested that this conference be set up
3 because Jim Burke called the office yesterday
4 and asked about the second session for the
5 deposition of Mr. Brinker.

6 And I thought this is certainly
7 his witness and somebody that he didn't request
8 to be deposed. It was Mr. Brautigam's request,
9 so I thought, let's all talk and see what's
10 going on with Mr. Brinker here. So do you want
11 to redepose or continue his deposition?

12 MR. BRAUTIGAM: Yes, Your Honor --
13 this is Mike Brautigam -- I'd like to do
14 exactly that.

15 MR. BURKE: Your Honor, this is
16 Jim Burke. Our position is that given the fact
17 that there are 800 pages of transcript from the
18 state court action which we've stipulated can
19 be used, and Mr. Brautigam was given another
20 two hours with Mr. Brinker last month or
21 thereabouts and spent most of the time
22 reploting old ground, but certainly had a full
23 and fair opportunity to ask questions about any
24 additional issues on, on the new claims he's

1 added, that that was more than a reasonable
2 opportunity to clear up any loose ends,
3 particularly in view of Mr. Brinker's condition
4 and how difficult and -- it was for him to
5 participate and have to go through what he did
6 go through. So we believe that no further
7 deposition is necessary or appropriate.

8 MR. BRAUTIGAM: Your Honor, that's
9 simply not true. Mr. Brinker gave answers that
10 were only tangentially related to the questions
11 in most cases. That took a lot of time. You
12 have previously ruled that plaintiffs are
13 entitled to depose him in this case with
14 respect to new issues. We need to continue
15 that process. It's that simple.

16 THE COURT: Well, here's what's
17 simple: That deposition of Mr. Brinker was a
18 complete waste of time, my time and every
19 lawyer in the case's time. It produced nothing
20 other than what he said in his original
21 transcript, so there will be no further
22 deposition of Norbert Brinker. All right?

23 MR. BURKE: Thank you, Your Honor.

24 MR. BRAUTIGAM: Your Honor, there

1 are a few other issues.

2 THE COURT: What?

3 MR. BRAUTIGAM: One, document 225
4 has not been decided. On December 9th we had a
5 status conference and you suggested that
6 plaintiffs file a one page motion that relates
7 to the depositions of KMK Attorneys Kreider and
8 Rosenberg. And you said for Mr. Burke to
9 respond with a one page reply. He didn't
10 exactly do that, but nonetheless that's been
11 pending for quite some time.

12 Also, there's document 204, a
13 motion to strike that's been pending. And we'd
14 like to get some guidance with respect to the
15 Meier depositions, because the plaintiffs would
16 like to take the deposition of Gary and Lisa
17 Meier.

18 THE COURT: Wait a minute. What's
19 204?

20 MR. BRAUTIGAM: 204 is a motion to
21 strike, Your Honor.

22 THE COURT: Strike what?

23 MR. BRAUTIGAM: Well, one of the
24 shadow counsel at KMK, Pat Fisher, saw it fit

1 to copy you on a letter he sent to some of the
2 counsel. The sole purpose of the letter was to
3 call me names. We believe that that's
4 inappropriate. We filed a motion to that
5 effect, they didn't even oppose it, and we'd
6 like a ruling on that.

7 THE COURT: Okay. Now, what else
8 is --

9 MR. BRAUTIGAM: Document number
10 225, Your Honor. That relates back to a
11 December 9th status conference. You suggested
12 that I file a simple one page motion, which I
13 did. This relates to the depositions of KMK
14 Attorneys Kreider and Rosenberg. And we had
15 made great progress in scheduling these things.
16 I believe one was actually scheduled --

17 THE COURT: Now, what about that?
18 Can we move forward on that one?

19 MR. BRAUTIGAM: Well, Your Honor,
20 we'd love to move forward. We're simply
21 waiting for your ruling.

22 THE COURT: Is that opposed?

23 MR. BREIDENSTEIN: Your Honor,
24 this is Tom Breidenstein, it's document 232,

1 the opposition memo. It's opposed for two
2 reasons. Primarily because your own order says
3 there shall be no discovery on claims asserted
4 against the new parties, particularly KMK and
5 Ernst & Young, pending rulings on the motions
6 to dismiss.

7 I think that's reflective of the
8 PSLRA, which stays all of the pending discovery
9 when there are motions to dismiss. So for
10 those two reasons primarily we object to the
11 depositions of those two KMK attorneys. It's
12 fully briefed and Mr. Brautigam has filed a
13 reply at document 235.

14 MR. BRAUTIGAM: Your Honor, we
15 want to take the depositions of those attorneys
16 in relation to the original complaint, relating
17 to the registration and proxy materials.

18 Counsel have filed a very
19 impressive document, unfortunately it had
20 nothing to do with the issues before the Court.
21 It focused exclusively on the PSLRA. That has
22 nothing to do with the reason we want to take
23 the depositions at this point. And it's
24 inconsistent with your order which allows

1 depositions with respect to the original
2 allegations to go forward.

3 MR. BREIDENSTEIN: Your Honor, the
4 issue has been fully briefed. I don't know
5 what more I can say except to say that when you
6 start to take the depositions of these KMK
7 attorneys for what Mr. Brautigam relates as
8 facts predating our involvement in the issues,
9 it's really impossible to divorce those issues.

10 The motion is only pending until
11 April 30th, which is the date for the ruling on
12 the motions to dismiss. And there's plenty of
13 stuff that Mr. Brautigam can do in the
14 meantime.

15 THE COURT: Other than that one
16 and the motion to strike in 204, what else?

17 MR. BRAUTIGAM: Your Honor, you --

18 THE COURT: Is that it?

19 MR. BRAUTIGAM: No, Your Honor.

20 The plaintiffs would like to depose Gary and
21 Lisa Meier. We had that scheduled and you
22 called that off and you said it could be
23 rescheduled at an appropriate time. And we'd
24 like some guidance on that.

1 Perhaps the defendants want to
2 take their depositions for class reasons and
3 perhaps not. That doesn't really matter to us,
4 we want to take their depositions as fact
5 witnesses who received the proxy materials and
6 relied on it.

7 THE COURT: You want to take the
8 depositions of the plaintiffs, who are your own
9 clients, right?

10 MR. BRAUTIGAM: Yes, Your Honor.

11 THE COURT: Okay. Any comments
12 from anybody?

13 MR. BREIDENSTEIN: Your Honor, Tom
14 Breidenstein once again. You've already ruled
15 on that issue in document 240.

16 THE COURT: Okay.

17 MR. BRAUTIGAM: And that's the
18 point, Your Honor. Your ruling we believe was
19 ambiguous.

20 THE COURT: Okay.

21 MS. PERRY: Your Honor, Mary-Helen
22 Perry for Ernst & Young.

23 THE COURT: Yes, ma'am.

24 MS. PERRY: I might also raise or

1 reaffirm what Mr. Breidenstein has already
2 raised, the PSLRA prohibits continued
3 proceedings against parties who are subject to
4 a motion to dismiss. We would take the
5 position that that would include the
6 affirmative discovery of the Meiers until April
7 30th.

8 THE COURT: Okay. Anything else?
9 So it's the deposition of the Meiers, the
10 motion to strike Pat Fisher's letter, and the
11 depositions of the two Keating lawyers, Kreider
12 and Rosenberg, right?

13 MR. BRAUTIGAM: Right. And also
14 Norb Brinker, and we assume that you'll put
15 that in writing.

16 THE COURT: Absolutely I'll put
17 that in writing. I started taking notes in the
18 Brinker deposition for about 15 or 20 minutes.
19 Then I looked down at the crowd of defense
20 lawyers, most of which were asleep, and I
21 thought no wonder, you know, this is just a
22 waste -- a complete waste of time. So yeah,
23 I'll put it in writing, all right? And we'll
24 get to the others as soon as we can.

1 MR. BURKE: Thank you, Your Honor.

2 MR. BRAUTIGAM: Thank you, Your

3 Honor.

4 MS. PERRY: Thank you, Your Honor.

5

6 - - -

7 (Hearing concluded at 10:06 a.m.)

8 - - -

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

C E R T I F I C A T E

I, Lee Ann Williams, a Notary Public in
and for the State of Ohio, do hereby certify
that the foregoing is a true and correct
transcript of the proceedings in the foregoing
captioned matter, taken by me at the time and
place so stated and transcribed from my
stenographic notes.

My commission expires:
August 26, 2004 Lee Ann Williams, RPR
Notary Public-State of Ohio